

The Honorable Richard A. Jones  
The Honorable Magistrate J. Richard Creature

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IAN SIMMERS,

Plaintiff,

V.

KING COUNTY; the CITY OF BOTHELL; DET. EDWARD J. HOPKINS; Sergeant. CLEMENT RUSK; DET. REBECCA MINER; DET. JOHN MCSWAIN; DET. PAT RAFTUS; DET. KEN BAXTER; CHIEF MARK ERICKS; DET. SGT. DAVID SCHLAEDEL; and MAJ. JACKSON BEARD; Unknown Officers of the City of Bothell Police Department; and Unknown Sheriff Deputies of King County,

## Defendants.

No. 2:21-cv-00100-RAJ-JRC

[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS OF  
DEFENDANTS CITY OF BOTHELL,  
EDWARD HOPKINS, REBECCA  
MINER, MARK ERICKS, AND DAVID  
SCHLAEDEL

Noted: April 16, 2021

This matter came before the Court on a Motion to Dismiss brought by Defendants City of Bothell, Edward Hopkins, Mark Ericks, Rebecca (Miner) Donley and David Schlaegel (collectively “the City Defendants”), pursuant to Fed. R. Civ. P. 12(c). The Court considered the City Defendants’ Motion and argument and the following pleadings:

1. City Defendants' Motion to Dismiss and Evidence Relied Upon;
2. Plaintiff's Opposition to City Defendants' Motion to Dismiss;
3. Defendants' Reply to Plaintiff's Opposition to City Defendants' Motion to

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DISMISS OF DEFENDANTS CITY OF BOTHELL,  
EDWARD HOPKINS, REBECCA MINER, MARK  
ERICKS, AND DAVID SCHLAEDEL - 1  
2:21-CV-00100-JRC

KEATING, BUCKLIN & MCCORMACK, INC., P.S.  
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1 Dismiss;

2 4. \_\_\_\_\_

3 5. \_\_\_\_\_

4 6. \_\_\_\_\_

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss of  
 6 Defendants City of Bothell, Edward Hopkins, Mark Ericks, Rebecca (Miner) Donley and  
 7 David Schlaegel is **GRANTED** and that all claims against the City Defendants are dismissed  
 8 with prejudice, for the following reasons:

- 9 1. Plaintiff is collaterally estopped from making claims based on his confession or  
 10 testimony of a jailhouse informant, as those issues were raised and ruled on by  
 11 Washington State courts.
- 12 2. Plaintiff is judicially estopped from making claims based on his confession where  
 13 he made contradictory representations to a Washington State court when moving  
 14 to vacate his conviction.
- 15 3. Plaintiff is barred from making claims based on his confession pursuant to *Heck*  
 16 *v. Humphrey*, because his confession provided a factual basis for existing  
 17 convictions that have not been vacated.
- 18 4. Plaintiff is barred by the statute of limitations from bringing state law claims.
- 19 5. Plaintiff is barred by the statute of limitations from bringing Fourth Amendment  
 20 claims based on his arrest and detention that took place prior to criminal charges  
 21 being brought against him.
- 22 6. Plaintiff lacks standing to raise claims based on the interrogation of Jonathan  
 23 Wyatt.
- 24 7. Because Plaintiff is barred from making claims dismissed above, the same claims  
 25 cannot be used as a basis for *Monell* claims against City Defendants.
- 26 8. Even if not barred as above, Plaintiff's Complaint fails to sufficiently state a

27 [PROPOSED] ORDER GRANTING MOTION TO  
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1 claim against City Defendants pursuant to *Monell* under either a ratification or  
2 custom and policy theory.

3

4 DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

5

6

7 The Honorable Richard A. Jones  
8 UNITED STATES DISTRICT JUDGE

9

10 Presented by:

11 KEATING BUCKLIN & MCCORMACK, INC., P.S.

12 By: /s/ Paul J. Triesch  
13 Paul J. Triesch, WSBA #17445  
14 Shannon M. Ragonesi, WSBA #31951  
15 Attorneys for Defendants City of Bothell,  
Hopkins, Miner, Ericks and Schlaegel

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